

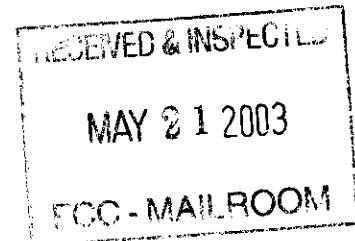
**CARIBBEAN ASSOCIATION OF NATIONAL TELECOMMUNICATION ORGANIZATIONS**

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May 12, 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, N.W.
Room TW-B204
Washington, D.C. 20554

***Re: Ex Parte Submission In IB Docket Nos. 02-324 & 96-261***

Dear Ms. Dortch:

On behalf of the Caribbean Association of National Telecommunication Organizations ("CANTO"), I am submitting this letter in regard to the *Notice of Proposed Rulemaking* (FCC 02-285) released in the above-referenced proceedings on October 11, 2002. In this letter, CANTO wishes to address the issue whether the Commission should retain, modify or eliminate the current settlement rate benchmark policy that the Commission first adopted in *International Settlement Rates*, 12 FCC Rcd 19806 (1997). Due to the need to obtain input from member carriers and achieve a consensus regarding this issue, CANTO was not able to finalize this submission prior to the deadline for submitting reply comments. CANTO requests that the Commission consider this submission as informal comments on the record in this rulemaking proceeding.

CANTO is an industry association that represents 45 Caribbean telecommunications operating companies, and it is a formal member of the International Telecommunication Union ("ITU").¹ The mission of CANTO is to foster and facilitate regional cooperation and integration in the development of the telecommunication sectors of the Caribbean Region, with the vision to become the backbone of the Caribbean family dedicated to human and economic development via telecommunications.

After active consultations with its members, CANTO wishes to make the following points regarding the FCC's settlement rate benchmark policy:

¹

CANTO's member carriers operate in the following countries or territories: Anguilla; Antigua; Aruba; Bahamas; Barbados; Belize; Bonaire; Cayman Islands; Cuba; Curacao; Dominica; Dominican Republic; Grenada; Guadeloupe; Guyana; Haiti; Jamaica; Martinique; Mexico; Montserrat; Puerto Rico; St. Kitts; St. Lucia; St. Maarten; St. Vincent & the Grenadines; Suriname; Tortola (B.V.I.); Trinidad & Tobago; Turks & Caicos Islands; and U.S. Virgin Islands.

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1. CANTO subscribes to the fundamental principle that termination rates for international switched telephony should be established, as much as possible, pursuant to bilateral commercial negotiations between correspondent telecommunications carriers, as contemplated by applicable international regulations (e.g., ITU-T Articles 1.5 & 6.2.1). To the extent it may be necessary for a National Regulatory Agency ("NRA") to regulate international termination rates, CANTO submits that any such regulations should be imposed only by the local NRA with jurisdiction over the terminating carrier and its network. The reason is that only the local NRA possesses the necessary information and competence to adopt policies that will promote the public interest consistent with all relevant data in light of the specific marketplace, economic and social conditions of the terminating country. In order to minimize jurisdictional conflicts while respecting marketplace forces, CANTO urges foreign NRAs to avoid intervening through unilateral actions designed to prescribe the termination rates assessed by fixed or mobile telecommunications carriers in other countries.

2. CANTO understands that concerns have been expressed on the record regarding actions by a few countries to mandate an increase in current international termination rates. Without taking a position on whether these actions are justified, CANTO urges the FCC not to implement a reduction in current benchmark levels as a tool for opposing the efforts of foreign governments to establish a new floor for international termination rates. In some cases, if benchmark rates are reduced to a level that is lower than the floor established by a foreign government, such FCC actions could precipitate a present or future conflict of laws between the United States and one or more foreign countries. Given the current turmoil and volatility in the global telecommunications sector, such conflicts could generate harmful uncertainty and confusion by escalating rather than resolving conflicts. CANTO would note that it is unsettled as a matter of U.S. law whether the FCC has authority under the Communications Act of 1934 to take actions which may create conflicts with foreign laws and regulations. *See Cable & Wireless plc v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999).

3. At least one carrier has asked the Commission to commence a rulemaking to implement a general reduction in the benchmark rate levels for all countries. *See Comments of AT&T Corporation*, filed Jan. 14, 2003, at 26-29. In addition to the reasons stated in the preceding paragraphs, CANTO believes that an across-the-board reduction would be inappropriate at this time because many telecommunications carriers have not had sufficient time to adapt fully to the existing benchmark rate levels. In particular, a number of CANTO member carriers – namely, those serving low-income countries – have had only a little more than one year to accommodate severely reduced settlement rates. For carriers serving low teledensity countries, the applicable transition period under the current rules expired less than three months ago on January 1, 2003. Many foreign carriers have suffered significant revenue losses due to a 70% or more reduction in the settlement rate under the FCC's benchmark policies, and they have not yet been able to recoup those losses from other sources. Rate rebalancing is critical to ensuring that domestic rates are modified to reflect the elimination of historic settlement revenue subsidies, but rate rebalancing remains elusive in many countries. For example, according to CANTO statistics, the rate for monthly residential local service is a mere \$1.98 (U.S.) per line in Belize; \$2.63 (U.S.) per line in Guyana; and \$4.60 (U.S.) per line in Trinidad & Tobago. These and many other local telephone rates in the Caribbean Region are not compensatory at current

levels. The Commission should give foreign carriers significant additional time to implement the changes necessary to accommodate the current benchmark rates before considering whether to implement another across-the-board reduction.

4. One commenting party has suggested that the Commission limit any benchmark modifications to countries that seek to implement unilateral increases in current termination rates. *See* Comments of Sprint, filed Jan. 14, 2003, at 15. While CANTO opposes any reductions in current benchmark rates, CANTO would not necessarily object to targeted enforcement actions by the Commission in cases where a foreign carrier seeks to increase current termination rates beyond what may be mandated by its government or NRA. However, rather than modifying its benchmark policies, the Commission should consider enforcing long-standing Commission policies, such as those prohibiting whipsawing tactics, as a mechanism to address anti-competitive conduct by private parties holding market power. Without taking any position on the merits of the dispute, CANTO would note that both AT&T and WorldCom recently have initiated such enforcement actions against certain carriers in the Philippines. *See Public Notice*, IB Docket No. 03-38, DA 03-390, rel. Feb. 10, 2003.

5. It is CANTO's belief that any effort by the FCC to mandate further reductions in benchmark settlement rates may not have the same marketplace impact as the initial benchmark policy. As numerous commenting parties already have noted in this proceeding, there are many types of non-traditional routing configurations that effectively bypass traditional bilateral correspondent relationships between U.S. and foreign countries. Those marketplace mechanisms have become more well-established and elaborate in the years since the FCC first adopted the benchmark regime. Should the Commission implement further benchmark reductions, it is likely that many foreign carriers would consider whether it is feasible to use non-traditional routing mechanisms as a substitute for direct relations with U.S. carriers. It is even possible that, as carriers move to alternative routing arrangements, some carriers might seek to selectively increase rates from current levels. CANTO urges the Commission not to distort the current market conditions on traffic routing by seeking to impose further unilateral reductions in settlement rates.

6. When the Commission adopted the current benchmark regime in 1997, it made a commitment to U.S. consumers (and to foreign carriers) that it would monitor the actions of U.S. international carriers to make sure that they lowered their collection rates to reflect declining termination costs in foreign countries on a route-by-route basis. *International Settlement Rates*, 12 FCC Rcd 19806 (¶ 272) (1997). Lower collection rates would benefit U.S. consumers through cost savings, and they would benefit foreign carriers by stimulating U.S.-outbound traffic, thereby mitigating some portion of the settlement revenue loss caused by the benchmark regime. Unfortunately, U.S. international carriers have not passed through settlement cost reductions on a route-by-route basis, particularly for less developed countries. On many routes between the U.S. and CANTO member countries, the lowest Calling Plan discount rate that is available to U.S. consumers is significantly higher than the underlying termination costs of the U.S. international carriers. For example, the lowest rate available to a U.S. subscriber under AT&T's Any Hour International Savings Plan – after the payment of a monthly fee of \$2.95 – is \$.88/minute for Guyana; \$.72/minute for Belize; and \$.63/minute for Guadeloupe, even though the foreign carrier in each country has accepted a benchmark settlement rate of \$.19/minute

(Belize and Guadeloupe) or \$.23/minute (Guyana). The rates on many other routes are also far in excess of underlying costs. CANTO would note in passing that it is often less expensive for a person in a CANTO member country to make a call to the United States than it is for a person in the United States to make a call to the CANTO member country! CANTO urges the Commission not to consider implementing further benchmark rate reductions until it has first required U.S. international carriers to fully pass-through the cost savings they have enjoyed under the current benchmark regime.

Respectfully submitted,



Selby Wilson
Secretary General

Board of Directors:

Mr. Cornelius B. Prior - Chairman, Guyana Telephone & Telegraph Company, Guyana; Mrs. Camille Facey - Vice Chairman, C&W Jamaica Ltd, Jamaica; Mrs. Helma Etnel - Treasurer, St. Maarten Telephone Company, St. Maarten; Mr. Z. Roland Croes - SETAR, Aruba; Mr. Leon Williams, The Bahamas Telecommunications Company Ltd. Bahamas; Mr. Edsel S. Winklaar -- Telefonía Bonairiano N.V., Bonaire; Mr. Colin Little, Cable & Wireless Antigua Ltd., Antigua; Mr. Pedro Rodríguez-Pérez -- Ministry of Informatic & Communications, Cuba; Mr. Lyrio Gomez , United Telecommunication Services, Curacao.; Mr. Selby Wilson - Secretary General, Trinidad & Tobago.